



02.152
Years: 2002 - 2005

CONTRACTUAL AGREEMENT

This Agreement is made by and between the American Association of State Highway and Transportation Officials, Inc a corporation of the District of Columbia, with offices at 444 N Capitol St. N.W., Suite 249, Washington, D C 20001, hereinafter referred to as the "ASSOCIATION," and Arizona Department of Transportation, with offices at 206 South 17th Avenue, Phoenix, Arizona, hereinafter referred to as the "MEMBER DEPARTMENT."

WITNESSETH

Whereas, the ASSOCIATION is operating the National Transportation Product Evaluation Program, hereinafter referred to as the "NTPEP", which requires that testing of certain materials, products and devices be carried out and reported in a prescribed manner approved by the ASSOCIATION; and

Whereas, the MEMBER DEPARTMENT is willing to carry out testing of certain materials, products and devices as specified herein, in accordance with the procedures established by the ASSOCIATION for the NTPEP:

Now, Therefore, in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the ASSOCIATION and the MEMBER DEPARTMENT agree as follows:

1. Technical Assistance

- (a) The MEMBER DEPARTMENT shall perform field test deck evaluations and furnish the data to Virginia Department of Transportation as outlined in the attached "Project Work Plan for Field and Laboratory Evaluations of Sign Sheeting Material," hereinafter referred to as the "Project Work Plan," which is hereby incorporated into this Agreement.
- (b) The MEMBER DEPARTMENT is equipped and qualified to do the test deck evaluations and furnish the final data to Virginia Department of Transportation, as outlined in the Project Work Plan.
- (c) The MEMBER DEPARTMENT shall furnish all necessary personnel, materials, facilities, equipment, service and all other resources and capabilities necessary or desirable to do the test deck evaluations and furnish the data to Virginia Department of Transportation as outlined in the Project Work Plan.
- (d) The MEMBER DEPARTMENT agrees in performing the test deck evaluations and furnishing the data to Virginia Department of Transportation as outlined in the Project Work Plan, it will do the work in an acceptable workmanlike manner, as determined by the ASSOCIATION and in conformance with general practice as recognized by the state departments of highways and transportation that comprise the ASSOCIATION

2. Period of Performance

- (a) The MEMBER DEPARTMENT shall complete the work described in the Project Work Plan in accordance with the following general schedule:
1. Test panels will be fabricated by Virginia Department of Transportation in April 2002. The panels will be shipped from Virginia to Arizona as soon as practical and the sign sheeting materials will be installed on the field test decks no later than **June 2002**.
 2. Status reports will be made to the NTPEP Coordinator every six months.
 3. Test data for inclusion in the "Year 1" interim report will be sent to Virginia Department of Transportation by **July 1, 2003**; test data for inclusion in the "Year 2" interim report will be sent to the Virginia Department of Transportation by **July 1, 2004**; and test data for inclusion in the "Year 3 -- Final Report" test deck report will be sent to Virginia Department of Transportation by **July 1, 2005**.
- (b) Whenever the MEMBER DEPARTMENT knows, or reasonably should know or anticipates, that any condition beyond its control is delaying or threatens to delay the timely performance of the testing work and the making of timely reports, it shall advise ASSOCIATION of the actual or expected delay, the cause thereof, and the then expected completion date of the testing work and reports.

3. Costs and Payments

- (a) The cost per sample (test deck evaluation only) under this Agreement and the Project Work Plan shall be **\$175.00** (Exactly One Hundred Seventy-Five dollars and no cents) per product style and type per site location. This amount is a fixed price per sample tested, (test deck evaluation only) and furnish data to Virginia Department of Transportation for the interim and final reports. It is agreed that in no event will the ASSOCIATION pay the MEMBER DEPARTMENT for costs incurred in excess of the fixed price per sample, unless a mutually acceptable separate written agreement is entered into between the parties.
- (b) If testing work under this Agreement is terminated by the ASSOCIATION without cause, the amount payable to the MEMBER DEPARTMENT will be in proportion to the percentage of completion of the testing work as described in the Project Work Plan, as of the effective date of such termination or suspension.
- (c) The ASSOCIATION shall make payments to the MEMBER DEPARTMENT in accordance with the following procedure:
1. The MEMBER DEPARTMENT shall submit an invoice to the ASSOCIATION for reimbursement for the test deck evaluation work when it has completed all the evaluations on the samples and furnished data to Virginia for all the approved products as identified by the NTPEP Coordinator at the fee schedule outlined in (a) above, payable to the MEMBER DEPARTMENT under this Agreement, and the invoice being supported with accepted accounting principles and procedures.
 2. Upon written request by and at the expense of the ASSOCIATION, the MEMBER DEPARTMENT shall permit a designated representative of the ASSOCIATION to inspect, copy and audit the MEMBER DEPARTMENT's books and records relating to the performance of this Agreement.

4. **Stop Work Order**

The ASSOCIATION may, upon not less than a ten day written notice to the MEMBER DEPARTMENT, require the MEMBER DEPARTMENT to stop all, or any part of the work called for by this Agreement. Upon receipt of such a stop work order, the MEMBER DEPARTMENT agrees to comply with its terms and take all reasonable steps to minimize the incurring of additional costs allocated to the work covered by the stop work order during the period of work stoppage

5. **Termination**

- (a) This Agreement may be terminated by the ASSOCIATION with a 30-day written notice to the MEMBER DEPARTMENT. In the event of termination by the ASSOCIATION without cause, the MEMBER DEPARTMENT shall be paid all costs and obligations incurred in accordance with this Agreement prior to the date of termination. Such reimbursement, together with other payments already made, shall not exceed the per sample cost times the number of samples approved for testing by the NTPEP Coordinator.
- (b) This Agreement may be terminated by the MEMBER DEPARTMENT with a 30-day written notice to the ASSOCIATION.
- (c) Upon termination of the Agreement prior to its full term, the MEMBER DEPARTMENT agrees to provide to the ASSOCIATION all data collected up to the time of termination, and to provide required reports through such termination date.

6. **Reports**

- (a) Interim reports shall be prepared and delivered to the ASSOCIATION as required in the Project Work Plan.
- (b) After completion of the testing work, or upon termination of this Agreement under Section 5, the MEMBER DEPARTMENT shall make a final reporting in the manner described in the Project Work Plan

7. **Indemnification**

- (a) To the Extent provided by law, the MEMBER DEPARTMENT hereby assumes its responsibilities for any loss resulting from bodily injuries (including death) or damages to property, arising out of any act or failure to act on the MEMBER DEPARTMENT's part, or the part of any employee of the MEMBER DEPARTMENT in the performance of the work undertaken under this agreement and contract.
- (b) To the Extent provided by law, the ASSOCIATION hereby assumes its responsibilities for any loss resulting from bodily injuries (including death) or damages to property, arising out of any act or failure to act on the ASSOCIATION's part, or the part of any employee of the ASSOCIATION in the performance of the work undertaken under this agreement and contract.

8. Proprietary Rights to Data

It is agreed that the ASSOCIATION shall be the owner of and shall have the exclusive proprietary rights, to the exclusion of the MEMBER DEPARTMENT, to all data and reports resulting from this Agreement, shall hold copyright thereto, and have the exclusive right to publish, disclose, disseminate and use in whole or in part any data and information received or developed under this Agreement.

9. Term of the Agreement

The term of this Agreement shall be for the period as stated in the Project Work Plan, measured from the effective date of the Agreement.

10. Effective Date

This Agreement shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the ASSOCIATION and the MEMBER DEPARTMENT, the effective date being that upon which the last party hereto executes the Agreement as stated below.

11. Jurisdiction

This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona.

12. Interpretation

Where interpretation of the Project Work Plan and the terms of this Agreement becomes necessary, recourse shall first be had to the operating procedures established by the ASSOCIATION for the NTPEP, including the appeals process thereof.

13. Completeness

This Agreement is the complete and exclusive statement of the arrangement between the parties, and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter thereof. It may be amended from time to time in writing by the mutual consent of the parties hereto.

14. Communications

All communications concerning this Agreement, including invoices and reports, shall be sent to:

For the ASSOCIATION:

Mujeeb A. Basha, PE
NTPEP Coordinator
AASHTO
444 N. Capitol St. NW, Ste 249
Washington, D.C. 20001
(202) 624-3695
mujeebb@ashto.org

For the MEMBER DEPARTMENT:

Mr. Doug Forstie, PE
Assistant State Engineer, Materials Group
Arizona Department of Transportation
206 South 17th Avenue
Phoenix, Arizona 85007

In Witness Whereof, the parties have set their hands and seals by their duly authorized agents and representative on the day and year below written:

**AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION
OFFICIALS (AASHTO)**

Witness: _____

Date _____

By: _____

Title: _____

Executive Director

Witness: _____

Date _____

**ARIZONA DEPARTMENT OF
TRANSPORTATION (ADOT)**

By: _____

Title: _____

STATE MATERIALS ENGINEER
Chief Engineer